(Smt. Asha Tiwari & ors. Vs. M/s Swift Carriers Pvt. Ltd. & Anr.)

S.B. CIVIL MISC APPEAL NO.875/2006.

Date of Order :: 06.09.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sandeep Saruparia, for the appellants.

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Having heard learned counsel for the appellants and having examined the record, this Court is satisfied that the award made by the Tribunal in the sum of Rs. 3,46,400/- for compensation to the claimant-appellants in their Claim Case No.954/2004 on account of accidental death of Shri Prem Tiwari, 31 years in age, husband of appellant No.1, father of appellant No.2 and son of appellant No.3 remains that of just compensation and there is no scope for enhancement.

The deceased met with his untimely end in an accident occurring on 16.09.2000 in head-on collision of a taxi-car bearing registration No. RJ 27T 0683 he was travelling in; and a tanker bearing registration No. PB 12D 8456. The Tribunal found in issue No.1 the accident to have occurred for rash and negligent driving of the tanker that resulted in accidental death of six persons including Shri Prem Tiwari. After rejecting the contention of the insurer of the offending tanker for its exoneration in issue No.3, the Tribunal considered quantification of compensation in issue No.2.

In relation to the case of the present appellants, the Tribunal noticed their contention of monthly income of the deceased at about 7,000/- per annum while working as a salesman with Rajasthan Handloom House and referred to the statement of the claimant Smt. Asha Tiwari AW-1 and so also the owner of the said Handloom House Sajjan Sinha AW-2, and found discrepancy in their statements about salary income of the deceased. The claimant alleged the initial salary of her deceased husband at Rs. 6000-6500/- per month; whereas the owner of the Handloom House alleged the initial salary of the deceased at Rs. 5,000/- per month having been increased to Rs. 7,000/- short while ago. The Tribunal noticed that the relevant account books of the employer of the deceased were not produced and then commented that when the owner of the Handloom House was earning about Rs.8-10 thousand per month, it was not practically possible for him to employ three salesmen with monthly salary of Rs. 7,000/-, 4500/- and 4,000/- and further to pay commission also. Having regard to the overall circumstances, the Tribunal took the salary of deceased at Rs. 2,400/- per month and dependency of the claimants at Rs.1,600/- per month leading to the multiplicand of Rs.19,200/- per annum and applied a multiplier of 17 to assess pecuniary loss at Rs. 3,26,400/-. The Tribunal further awarded Rs. 2,000/- towards funeral expenses,

Rs. 3000/- towards transportation and Rs. 15,000/- towards non -pecuniary loss. Though a suggestion was made before the Tribunal about property loss including currency notes of Rs. 45,000/-, gold chain, bracelet, wrist watch, cloths etc. of the deceased but the Tribunal found that the claimants have not adduced relevant evidence in that regard and rejected such claim. The Tribunal, therefore, awarded compensation in the sum of Rs. 3,46,400/- and also allowed interest at the rate of 6% per annum from the date of filing of the claim application.

In relation to the salary income, a certificate dated 10.08.2000 has been produced on record as Ex.11. The said so-called certificate stated on a letter-head of Rajasthan Handloom House at 42, RMV Road, Udaipur, without relevant particulars of such business establishment like sales tax registration numbers, reads thus:

> "श्री प्रेम तिवारी
> सेल्समेन,
>
> आपकी सेवाओं को मद्देनजर रख आपका वेतन दि. 1/9/2000 से रू. 5000/- से बढ़ाकर रू. 7000/- किया जाता है । यह वेतन माह पूर्ण होने पर देय होगा ।"

Its author Shri Sajjan Sinha AW-2 has stated that the document was with him only that was collected by the wife of

the deceased Prem Tiwari. The said witness has stated that he was maintaining the accounts and was an income tax assessee and that the payments to the deceased were shown in the accounts. The statement of the said witness Sajjan Sinha does not inspire confidence and the document Ex.11 carries no probative value. Even the contents of the said document have been stated in an oblique manner of increasing the salary to Rs. 7,000/- from 01.09.2000 to be payable on completion of the month. It remains a fact that the deceased Prem Tiwari met with his accidental end on 16.09.2000. Obviously, there never arose any occasion for payment of salary at Rs. 7,000/- per month. In the overall circumstances of the case, it was definitely required of the claimants to have produced cogent evidence to show salary and/or commission income of the deceased; and in absence thereof, the Tribunal cannot be faulted in putting the estimated average income at Rs. 2,400/- per month and dependency at Rs. 1,600/- per month.

The Tribunal has not restricted itself on application of multiplier and has applied a higher side multiplier of 17 to assess pecuniary loss at Rs. 3,26,400/-. The Tribunal has also awarded reasonable amount towards non-pecuniary loss, transportation and funeral expenses.

So far the claim for property damage is concerned, though it was stated by the claimants that currency notes of Rs. 45,000/- and gold chain, wrist watch etc. of the deceased were lost and a request was allegedly sent by the claimant Smt. Asha Tiwari to the Station House Officer of Police Station Dudu, Distt. Jaipur (Ex.12) but merely on the basis of the said document, neither could it be concluded that the alleged property of the deceased was lost in the accident nor could a claim for property damage be countenanced. No other evidence having been produced on record, the Tribunal was justified in rejecting such part of the claim.

In the ultimate analysis, the award made by the Tribunal remains that of just compensation having been made after proper appreciation of evidence and on application of relevant principles. There is no scope for upward revision in favour of claimant-appellants.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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